



STATE OF INDIANA

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December 12, 2012

Mr. Cecil J. Black Jr.
DOC 146134
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-356; Alleged Violation of the Access to Public Records Act by the St. Joseph County Metro Homicide Unit

Dear Mr. Black:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Metro Homicide Unit ("Unit") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lora Bentley, Director, responded on behalf of the Unit. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on September 24, 2012 you submitted a written request for records to the Unit. As of December 10, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive a response from the Unit.

In response to your formal complaint, Ms. Bentley advised that the Unit has no record of receiving your request. Ms. Bentley provided in all of your correspondence that was submitted with your formal complaint, the Unit's address was listed as 532 Colfax/Hill Street, South Bend, Indiana, 46617. The Unit's correct address is 523 E. Jefferson, South Bend, Indiana, 46617. As the Unit is now aware of your request, it has commenced the process of determining if it maintains any records that are responsive.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Unit is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Unit's public

records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The Unit maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Unit received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). Accordingly, if the Unit did not receive your request, it was not obligated to respond to it. As the Unit is now aware of your request and commenced the process of gathering all documents that may be responsive, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing, it is my opinion that the Unit did not violate the APRA if it never received your request.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Lora Bentley